

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Vilmos Kéri et al.

Serial No. 09/578,587

Re-filed on April 19, 2000

For PROCESS FOR THE ISOLATION, etc.

Attorney's Docket: 100-004

Group Art Unit 1808  
Examiner Irene Marx

Mr. Bruce M. Kisliuk, Group Director  
Commissioner of Patents  
Washington DC 20231

Sir:

Petition for withdrawal of premature finality of rejection

First of all, the oft-repeated, and heretofore ignored, request for associating this application with Customer No. address 23622 of the undersigned attorney of record, and the resulting address change to receive PTO mailings on this 13 month ago changed address, is respectfully urged.

The withdrawal of the premature finality of the rejection contained in the Office letter mailed on 5/1/2002 is hereby requested pursuant to MPEP 706.07C and (d).

Prior to the issuance of that premature final rejection, in the amendment filed on September 6, 2001, the applicant referred the examiner's attention to a declaration under 37 C.F.R. 132 of Dr. Pólya that was filed in a parent application. In the prematurely final rejection the examiner refused to look up that affidavit, stating (without supplying any authority for the statement) that affidavits filed in a predecessor application do not become part of the continuing application and, therefore, a copy of the declaration should be submitted. In fact, a refusal to consider submissions made in predecessor applications vitiates the entire examination process since the examiner refuses to be aware of what went on earlier in predecessor applications.

In response the applicant filed a copy of the declaration which would have laid all outstanding rejections to rest (as they should have been rested since its original, but ignored, submission nearly 10 years ago. Instead

of considering the declaration, the examiner issued an Advisory Action refusing consideration of the submitted copy of the application originally filed in 1996, as having been submitted late, after final. Since the allegedly late-filed copy of the originally 1996-filed affidavit was submitted at the request of the examiner, and only because she decided to refuse to look up the original, 1996 version of the declaration, make the continued designation of the last rejection as "final" manifestly unfair and burdensome, that would require the filing of a fourth continuing application. This is especially so, because that affidavit eliminates all outstanding grounds of rejection.

As a further reason for requesting the withdrawal of the outstanding rejection's premature finality, is that in the Advisory Action the examiner the examiner raised a specific new, heretofore unuttered rejection concerning the use of the terminology "consisting essentially of" which was in the claims at least since September 2001. This belated ground of rejection for the first time raised in the Advisory Action also renders the outstanding rejection premature.

In fact, consideration of the affidavit by Dr. Pólya would also eliminate any basis for the rejection belatedly made on account of the use of the claim terminology "consisting essentially of," because unexpected beneficial results of vastly improved yields in that affidavit were especially highlighted, which improved yields were not present in process of the reference which employed more steps than those that were characterized in the claims as "consisting essentially of."

In view of the foregoing, withdrawal of the finality of the rejection dated May 1, 2002, is respectfully urged.

Respectfully submitted

Customer No. address 23622

  
Gabriel P. Katona, attorney of record

It is hereby certified that this is being fax transmitted on August 21, 2002.

